

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

OMNI CONSTRUCTION, INC.

PLAINTIFF

v.

Civil Action No. 1:96cv247-D-D

CITY OF COLUMBUS, MISSISSIPPI
UTILITIES COMMISSION

DEFENDANT

ORDER

Before the court is the Defendant's motion for judgment as a matter of law or, in the alternative, for a new trial, pursuant to Rules 50 and 59 of the Federal Rules of Civil Procedure. Upon due consideration, the court finds that the Defendant's motion should be denied.

Factual and Procedural Background

On March 22, 1993, Omni Construction, Inc. (Omni) entered into a contract with the City of Columbus Utilities Commission (the Commission) for the construction and installation of a sewer system on and around Highway 69 South in the City of Columbus, Mississippi. During construction of the system, disputes arose between Omni, the Commission, and the Commission's design engineer. After continued dispute and allegations of defective work, the Commission called upon USF&G, Omni's surety, to remedy the problems with the project. When no course of action met with the Commission's satisfaction, suit was filed against USF&G in this court in August 1996.

Omni and its principals were subsequently joined as third-party Defendants and a third-party complaint was filed against the Commission alleging breach of contract. The Commission, in turn, filed a counterclaim against Omni. Prior to trial, USF&G and the Commission settled their dispute and the Commission's claims against USF&G were dismissed. On August 18, 1999, approximately one month prior to trial, this court entered an order bifurcating the issues in the case, and allowing the claims and counterclaims of the Commission and Omni to proceed to the

first phase of trial.

At the close of the Plaintiff's case, the Commission moved for judgment as a matter of law, principally on the basis that Omni had failed to prove that it achieved substantial completion in accordance with the terms of the contract. That motion was denied. On September 24, 1999, a jury verdict was returned in favor of Omni and judgment was entered in the amount of \$396,700. The jury, via special interrogatories, specifically found that Omni had not breached the Omni/Commission contract and that Omni was due the above sum as the remaining contract balance. The Commission's present motion relies upon many of the same arguments asserted in its prior motion for judgment as a matter of law.

Discussion

A motion for judgment as a matter of law in an action tried by jury is a challenge to the legal sufficiency of the evidence supporting the jury's verdict. Hiltgen v. Sumrall, 47 F.3d 695, 699 (5th Cir. 1995). A jury verdict must be upheld unless "there is no legally sufficient evidentiary basis for a reasonable jury to find" as the jury did. Id.; see Fed. R. Civ. P. 50(a)(1).

In ruling on a motion for judgment as a matter of law, the court must view the evidence and all reasonable inferences in the light most favorable to the non-movant. Hiltgen, 47 F.3d at 700. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable persons could not arrive at a contrary verdict, judgment as a matter of law is proper. A jury may, however, draw reasonable inferences from the evidence, and those inferences may constitute sufficient proof to support a verdict. Id. Even though the court might have reached a different conclusion than the jury, the court is not free to re-weigh the evidence or to reevaluate the credibility of witnesses. Id.

In ruling on a motion for a new trial, the standard employed is whether the verdict is against the great weight of the evidence. Whitehead v. Food Max of Mississippi, Inc., 163 F.3d 265, 270 n.2 (5th Cir. 1998). If the court determines that the motion for judgment as a matter of law should be denied, the motion for a new trial may still be granted if the verdict is against the

great weight of the evidence. Rousseau v. Teledyne Movable Offshore, Inc., 812 F.2d 971, 972 (5th Cir. 1987). The court may not, however, grant a new trial simply because it would have come to a different conclusion than the jury did. See Peterson v. Wilson, 141 F.3d 573, 577 (5th Cir. 1998).

The Commission contends that the evidence is insufficient to support the jury verdict. Specifically, the Commission argues that 1) Omni failed as a matter of law to satisfy its obligation to prove that it achieved actual substantial completion or that its failure to do so was a result of a defective design in the plans and specifications, and 2) the verdict is against the overwhelming weight of the evidence .

Throughout its motion, the Commission urges the court to reconsider the evidence, reevaluate the testimony of witnesses, and reconsider proof that it contends the jury disregarded.¹ The issues submitted by the Commission were supported by lengthy and conflicting expert testimony and substantial evidence submitted by both parties, upon which the jury made credibility determinations, evidentiary conclusions, and factual inferences. As noted above, it is the function of the jury as the traditional finder of the facts, and not the court, to weigh conflicting evidence. See Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969)(en banc), overruled in part on other grounds by Gautreaux v. Scurlock Marine, Inc., 107 F.3d 331 (5th Cir. 1997)(en banc). Viewing the evidence in the light most favorable to Omni, the court concludes that a reasonable juror could determine that the Commission's actions hindered Omni's performance thereby constituting a breach of the contract, and that Omni's actions were either in accordance with the terms of the agreement or that any resulting defects in the project were attributable to defective design plans and specifications. Accordingly, the court finds that the verdict is supported by substantial evidence.

¹ Notably, the Commission takes issue with the jury's mere 45 minute deliberation in light of the 8 day trial. Such a shortened deliberation period, however, is a specific benefit of our automated courtroom which utilizes an evidence presenter to allow the jury to view documents and exhibits as they are presented, and not initially in the jury room. The court finds that the Commission's concern is without merit.

The Commission alternatively argues that the jury verdict is against the overwhelming weight of the evidence and that a new trial should be granted. The arguments of the parties concerning this issue are identical with those made regarding judgment as a matter of law, and need not be revisited in detail here. After reviewing the evidence, the court concludes that the verdict is not against the great weight of the evidence.

Accordingly, it is ORDERED that the Defendant's motion for judgment as a matter of law, or in the alternative, a new trial (Docket # 172) is DENIED.

SO ORDERED, this the _____ day of November 1999.

United States District Judge